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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA,  Plaintiff,  v.  ALLISON MARIE BAVER,  Defendant.	<b>MOTION TO CONTINUE SENTENCING</b>  Case No. 2:21-cr-00520-1  Honorable Judge Jill Parrish
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Defendant Allison Marie Bayer (“Ms. Bayer”), by and through counsel, Kristen R. Angelos, and Robert K. Hunt, moves this Court for an order continuing the sentencing hearing currently set for October 15, 2024, for a period of 90 days. In support, Ms. Bayer states the following:

- 1) On August 8, 2024, Mr. Bayer requested a continuance of her sentencing after recently learning that the District of Columbia, Board of Professional Responsibility (Washington D.C. Bar), had lodged a complaint against Assistant United States Attorney Jennifer Muyskens, for ethical violations involving her prosecutorial duties. Ms. Bayer requested

the continuance to determine whether there were additional motions that should be filed as a result of this new information. The Court granted Ms. Baver's request and set the current sentencing hearing date of October 15, 2024.

- 2) Shortly after this continuance was granted, Scott Wilson, Utah Federal Public Defender, began engaging with Trina Higgins, United States Attorney, District of Utah, asking for a third-party review of Ms. Baver's matter by an Assistant United States Attorney approved by defense counsel. The parties agreed that Jacob Strain (AUSA Strain), Assistant United States Attorney, would conduct the third-party review.
- 3) On August 29, 2024, AUSA Strain informed defense counsel that he had been asked by Trina Higgins to review discovery in Ms. Baver's matter to determine whether the United States Attorney's Office had satisfied their discovery obligations. AUSA Strain informed defense counsel that he had accessed and reviewed all of the Certificates of Compliance, Discovery Indices, the Eclipse Database, the NUIX software database, and their network system files to verify that the discovery obligations had been met. In conducting his review, he informed defense counsel that he had utilized a cross-sectional spot audit approach to randomly select files located on Eclipse or NUIX and then found the reference file in the NOCs. He informed defense counsel that in all spot audit instances, the discovery indices matched the software databases. After review, AUSA Strain indicated that the files represented to the Court as being turned over, were in fact, turned over.
- 4) Additionally, AUSA Strain informed defense counsel that he also accessed the network system case files where agent productions and subpoena responses are staged before they

are input into discovery production software. Utilizing a cross-sectional spot audit approach and randomly selected files, he indicated that he randomly selected files and utilized Eclipse or NUIX to do keyword searches to find those files in the production software. AUSA Strain informed defense counsel that he was unable to find any files or records that were required to be turned over in discovery that did not appear in the production databases.

- 5) As such, AUSA Strain indicated to defense counsel that after using this review methodology, he determined that anything that was discoverable was turned over to defense counsel.
- 6) On September 11, 2024, after being informed of AUSA Strain's review, defense counsel sent a letter to Trina Higgins, United States Attorney, and AUSA Strain requesting the Government look at three specific issues. First, defense counsel asked the Government to review Ms. Muyskens conversations with the Small Business Administration's (SBA) counsel regarding defense counsel's Touhy request to have SBA Agent Huyn available for trial. Second, defense counsel asked the Government to review Ms. Muyskens conversations with Lendio's counsel to determine whether additional discovery was provided to her by Lendio that was not provided to Ms. Bayer. Third, defense counsel inquired whether the IRS was involved in this matter, and if so, was there discovery obtained by the IRS that was not provided to Ms. Bayer. Ms. Bayer is aware that IRS Agent Jeffrey Kirkwood testified at trial regarding where the SBA loan money was spent after receipt, relying on discovery Ms. Bayer's prior accountant provided to the Government. Ms. Bayer's requests involves any other discovery the Government

received from the IRS.

With the above in mind, Ms. Bayer respectfully requests a continuance of the currently scheduled sentencing hearing in order to allow the Government to respond to Ms. Bayer's additional third-party review request and for any subsequent litigation, if necessary.

DATED this 16th day of September 2024.

/s/ Kristen R. Angelos

KRISTEN R. ANGELOS

Assistant Federal Defender

/s/ Robert K. Hunt

ROBERT K. HUNT

Assistant Federal Defender